REGISTERED No. D. 221

8/10/53

The Gazette of India

सत्यमेव जयते

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 252] NEW DELHI, MONDAY, OCTOBER 5, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 23rd September 1953

S.R.O. 1866.—Whereas the election of Shri Shatru Sudan Singh, as a member of the Legislative Assembly of the State of Vindhya Pradesh, from the Raipur constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mohan Singh Karchuli, s/o Sardar Govind Singh, Village Khujh, P.O. Raipur Karchulian, District Rewa;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, V.P., AT REWA

ELECTION PETITION No. 9/237 OF 1952

Shri Mohan Singh Karchuli, son of Sardar Govind Singh, resident of village Khujh, P.O. Raipur Karchulian, District Rewa—*Petitioner.*

Versus

1. Shri Shatrusudan Singh of Joginhai (Congress);
2. Shri Janardan Prasad, Vakil, resident of Fort Road, Rewa (Socialist);
3. Shri Mathura Prasad, resident of village Barehi, District Rewa (Independent);
4. Shri Ramayan Prasad, Vakil, resident of Fort Road, Rewa (Jan Sangh);
5. Shri Ram Behari Lal, resident of village Ataria, District Rewa (Independent); and
6. Shri Ram Kumar, Vakil, resident of Uprehti, Rewa (Ram Rajya pareshad)—*Respondents.*

CORAM

1. Shri E. A. N. Mukarji, M.A., LL.B.—*Chairman.*
2. Shri U. S. Prasad, B.A., B.L.—*Member.*
3. Shri G. L. Srivastava, M.A., LL.B.—*Member.*

ORDER

The Petitioner as well as the six respondents, named above, contested a seat in the V.P. Legislative Assembly from Raipur constituency at the last general elections held in January, 1952. Respondent No. 1 was returned. His election has been challenged on various grounds.

2. Firstly, it is contended that the design of the ballot boxes selected for and used at the last election were defective inasmuch as they can be opened without breaking the seals affixed to them and that the said boxes were not properly sealed. Such defective design of the ballot boxes afforded ample opportunity of tampering with their contents and in fact they were actually tampered with. It is further alleged that the Presiding Officer did not prepare sealed packets of unused and invalid ballot papers, marked electoral rolls etc. in presence of the petitioner's polling agent and at Gadariya polling station the Presiding Officer drove the petitioner's agent out of the polling booth soon after the close of the poll. Similarly none of the Presiding Officers are said to have prepared any Return in Form No. 10 before the petitioner's polling agent.

3. At the time of counting of ballot papers on the 21st January, 1952, the Returning Officer did not verify the result of his counting with the account previously prepared by the Presiding Officer, nor did he himself prepare before the petitioner any Return required under Rule 46 of the R.P. Rules, 51, relating to the conduct of Elections and Election Petitions. The petitioner or his counting agent was not permitted to take copies of extract made by the Returning Officer, if any, that day. Similarly packets of unused ballot papers were not opened and counted by the Returning Officer in the presence of the Petitioner or his counting agent. Subsequently when, on the 26th January, 1952, the petitioner obtained copies of the extracts made by the Returning Officer it transpired that according to Form No. 10 out of 1,100 ballot papers received by the Presiding Officer at polling station Saman 388 were issued and 12 were invalidated. Other 710 ballot papers were to be returned by the Presiding Officer after the poll but actually 686 ballot papers only were returned by the Presiding Officer. Then according to the figures in Form No. 10, out of 900 ballot papers authorised for use at Gadariya polling station, 283 were issued, 12 invalidated and 606 returned. At the time of counting, however, 306 were found in the ballot boxes *i.e.* 23 more than what had been issued by the Presiding Officer at Gadariya polling station. Similarly Form No. 10 relating to polling station Pandariya indicates that 940 out of total number of 1,400 ballot papers were issued to the electors there, 14 invalidated and 434 returned; but at the time of counting only 432 ballot papers were found in the ballot boxes. The lac seals over several of the ballot boxes were found to be broken. The petitioner contends that this coupled with the discrepancies pointed out above lead to the inference of actual tampering with the ballot boxes and their contents, particularly when, according to the petitioner, there was no proper arrangement for the transport and safe custody of the ballot boxes after the polls till the date of counting of votes.

4. Again it has been averred by the petitioner that the Government officials namely (1) Shri Dharm Das Misra, Sub-Inspector Police, (2) Pt. Brijhoman Das Misra, Postmaster of Raipur and (3) Shri Jamuna Prasad, Postman openly canvassed the voters for the Congress candidate at polling stations Raipur A and Raipur B, while Shri Jagdish Prasad, Accountant of Durbar College, Rewa canvassed the voters of this constituency at polling station Mankahri, Sagra and Boda in favour of respondent No. 1. Similarly the Patwari of Halka Rahat also did some canvassing for respondent No. 1. On the day of counting the Chief Commissioner, Mr. Pillai, was seen going round the tables and by his presence, it is suggested, exercised some undue influence upon the Returning Officer. But for the votes obtained by respondent No. 1 by such corrupt and illegal practices and transferance of ballot papers from the petitioner's boxes and also introduction of fresh and unused ballot papers into the boxes of respondent No. 1, the petitioner would have been found to have obtained a majority of the valid votes.

5. On the above and other allegations contained in paras. (a) to (s) of para. 7 of the petition, the petitioner prays that the election of respondent No. 1 and the election in this constituency as a whole, be declared void.

6. Respondent No. 1 alone has opposed and contested the petition. He has strongly denied and refuted each of the several grounds urged in sub-paras. (a) to (s). As contended by respondent No. 1, he has been duly elected and his election is not vitiated by any illegality or irregularity, breach of or non-compliance with the provisions of the R.P. Act and Rules relating to the Conduct of Elections and Election Petition, 51. No illegality or corrupt practice was, according to respondent No. 1, committed in course of the election. The respondent also pleaded non-joinder of parties and improper verification of para. 7 of the petition.

7. The pleas of the parties as contained in the petition and written statement of respondent No. 1 have given rise to the following issues:—

Issue No. I(a).—Whether the candidates who had been nominated but who had withdrawn their candidature were necessary parties to this petition?

Issue No. I(b).—If so, what is the effect of their non-joinder?

Issue No. II(i).—Has clause (i) of para. 7 of the petition not been properly verified?

Issue No. II(ii).—What is the effect?

Issue No. III.—Is the election of respondent No. 1 void:—

(1) Because the ballot boxes used in the election were defective and contrary to the mandatory provisions of law inasmuch as they could be unlocked and ballot papers could be taken out or put into them without their seals being broken.

(2) Because, with the connivance of respondent No. 1, his agents and supporters, such ballot boxes were tampered with and ballot papers from petitioner's ballot boxes were taken out and shown as unused or transferred to the ballot boxes of respondent No. 1 and fresh ballot boxes were put into the ballot boxes of respondent No. 1.

Issue No. IV(1).—Have there been contraventions of the provisions of the R.P. Act 1951 and of the Rules made thereunder as alleged in para. 7, clauses (b), (c), (d), (e), (g), (h) and (o) of the petition?

Issue No. IV(2).—Were such contraventions made with the connivance of respondent No. 1, so that the ballot papers could be manipulated, and were such ballot boxes actually tampered with ?

Issue No. IV(3).—If so, what is the effect?

Issue No. V(1).—Were no adequate arrangements made for the safe transport of the ballot boxes, packets etc. and for their safe custody, as required by law, with the result that they could be tampered with?

Issue No. V(2).—If so, were such ballot boxes actually tampered with by respondent No. 1, his agent and supporters?

Issue No. V(3).—If so, what is the effect?

Issue No. VI(1).—Did the Congress Organisation and V.P. Government officials actively participate in the election by canvassing for respondent No. 1 and by exercising undue influence, coersion etc. with a view to secure defeat of the K.M.P. Party?

Issue No. VI(2).—Was this done with the active connivance of respondent No. 1?

Issue No. VI(3).—If so, what is the effect?

Issue No. VII.—Is the petition not maintainable on account of the joinder of the two reliefs claimed?

Issue No. VIII.—To what relief, if any, is petitioner entitled?

FINDINGS

8. *Issue No. 1.*—It was contended on behalf of respondent No. 1 that the candidates whose nomination papers had been accepted by the Returning Officer and who thereafter withdrew their candidature, were necessary parties to this petition. By our order, dated the 26th November, 1952, we have held that such candidates were not necessary parties to the present election petition.

9. *Issue No. II(a) and (b).*—The question regarding the validity or otherwise of the verification of para. 7 of the petition has already been considered by our order, dated the 15th January, 1953. We have found that the verification is proper and not defective. So the second part of this issue does not arise.

10. *Issue No. III(1).*—The petitioner (PW 2) has himself demonstrated before us the opening of a ballot box of the same type and design as were used at the last general election in this and other constituencies, without damaging its paper or lac seals. A properly sealed box was placed before PW 2. The latter shifted the knots over the thread to some distance with a pin, pressed the centre of the knob with his thumb and the small disc, which is meant for locking the box was pressed down by force and it came out of the groove, thus unlocking the box. It took him only 1½ minutes to open the box. Neither the paper seal nor the lac seal over the thread was damaged. Hence we have to find that the ballot boxes can be opened with pressure and force applied in a particular manner and at a particular point of the knob, without causing any damage to its seal.

This, however, does not mean that there is any inherent or intrinsic defect in the design or construction of the ballot box, which was approved of by the Election Commission. It could not ordinarily be opened without breaking or tearing the paper seal pasted inside the window cover of the box. Only a person

who knew where and how to press and use force can open the box. While selecting and approving this design therefore, the Election Commission had taken due care to see that the ballot boxes could not be unlocked without breaking their paper seals and had thus substantially complied with the objects of Rule 21 of R.P. Rules, 1951. They could not have anticipated that some one would find out ways and means to open it with the use of dexterity, force and skill.

11. *Issue No. III*(2).—There is no direct or positive evidence on the record to prove the actual tampering with the ballot boxes and their contents. As a matter of fact the petitioner cannot be expected to lead any such direct or positive evidence on this point. No one would be such a fool as to commit the offence of tampering with the ballot boxes and their contents in presence of those whom he intends to harm thereby. All such acts are done clandestinely. In order to prove his case of tampering with the ballot boxes by respondent No. 1 or some one on his behalf or with his connivance, the petitioner has relied on a few circumstances which, in the opinion of the learned advocate for the petitioner, will lead us to the inferences of such tampering. We shall consider those circumstances while dealing with part 2 of Issue No. IV. Here we find that the petitioner's case of the ballot boxes having been tampered with, extraction of ballot papers from his boxes and introduction thereof into other boxes have not been proved by any direct evidence. The issue as it stands, is for the present answered in negative.

12. *Issue No. IV.*—We propose to deal with contraventions of the rules and provisions of R.P. Act as pointed out in the several clauses of para. 7 of the petition, which are the subject matter of our consideration under this issue, separately. (b) The petitioner (PW. 2), his polling agents PW. 3 and PW. 4 state that before the start of the poll, paper seals affixed to the ballot boxes were pasted loosely. As stated by PW. 3, after the close of the poll when the boxes were sealed the thread was kept at a such length as to reach the corner of the lid of the box where lac seal was put. The verbal testimony of PW. 4 on this point is to the same effect. As against this RW. 2, RW 6 and RW. 9 who worked as polling agents of respondent No. 1 swear that at the polling stations where they worked, the Presiding Officers used to paste the paper seals tightly before the commencement of poll and affix the lac seal over the thread close to the knob soon after the close of the poll. So witnesses for both the parties admit that the paper seals were affixed to the ballot boxes before the beginning of the poll and lac seals were affixed to the thread by passing the same through the knobs at the end of the polls. The difference between the evidence of PWs. and RWs. is with regard to the manner of pasting the paper seal and the length of the thread over which the lac seal used to be put. Now that the petitioner has demonstrated to us that the ballot boxes can be opened by pressing the top of the knob, the question regarding the looseness or otherwise of the paper seal as also the length of the thread bearing the lac seal becomes more or less immaterial. We, therefore, hold that the ballot boxes were in fact sealed by the Presiding Officers according to the rules. May be, in some cases Presiding Officers were not very careful about pasting the paper seal tightly and keeping the thread bearing the lac seal short.

13. The learned advocate for the petitioner has in this connection urged before us that with the string attached to the ballot boxes, the boxes cannot be sealed properly as intended by Rule 21, clause (5) of the R.P. Rules, 1951. As we have observed above the design and construction of the ballot boxes after being sealed, could not easily be opened by an ordinary man except by the use of force and skill. In the present case we find that the ballot boxes were actually sealed before and after the close of the poll in accordance with the rules embodied in R.P. Rules of 1951.

14. It has been alleged that at Gadariya polling station the polling agent of the petitioner as well as of other candidates were turned out of the polling booth soon after the close of the poll and hence the said polling agents of several candidates could not see the sealing of the packets as well as of the ballot boxes by the Presiding Officer. The petitioner (PW. 2) in his examination-in-chief says that his polling agent Sheo Prasad Dube who acted at Gadariya polling station reported to him that at the close of the poll, all the polling agents had been turned out of the polling booth and that none of them were allowed to note the total number of ballot papers supplied for use at that polling station and the number used. Thus we find that the petitioner's knowledge on this score is derived from the information supplied to him by his polling agent, Sheo Prasad Dube. The latter figures as PW. 3. He worked as polling agent of the petitioner at 4 polling stations, namely Saman, Gadariya, Sonaura and Bakchhera. At Saman the witness got the serial number of the ballot papers used that day after the close of the poll from the Presiding Officer. At Gadariya, however, the

Presiding Officer did not prepare any packet or return in his presence at the end of the day rather *'asked him to leave'*. The witness asserts to have presented a written objection regarding this matter to the Presiding Officer who threw it away saying that it was none of his business. At other two polling stations Sonaura and Bakchhera the Presiding Officers prepared sealed packets at the close of the day except of the electoral rolls in presence of this witness. Thus we find that the petitioner has to rely on the sworn testimony of his polling agent, Sheo Prasad (P.W. 3) alone to prove his allegations embodied in clause (c) of para. 7 of his petition Ramanuj Prasad (RW. 7) worked as the polling agent of respondent No. 1 at Gadariya polling station. As stated by him none of the polling agents enquired from the Polling Officer the serial number of the ballot papers to be issued by him before the commencement of the poll, nor was such an enquiry made by any of those agents at the close of the poll. He swears to have been present at the time when the Presiding Officer of Polling Station Gadariya put all the unused and invalid ballot papers in an envelope and sealed it. He further saw the Presiding Officer writing some thing in English and making several sealed packets at the end. Then towards the end of the cross examination RW. 9 states thus:—"polling closed at 4 P.M. and I left the place half an hour after that. Other polling agents also left the polling station at that time but not with me". According to RW. 10 the contesting respondent one Krishna, Labour Inspector, was the Presiding Officer at polling stations Gadariya, Pandariya and Saman. He is now somewhere in Lucknow and is no longer in the service of V.P. Government. His exact address, where he is working now, is not known to respondent No. 1. Hence the person who worked as Presiding Officer at Gadariya, Pandariya and Saman could not be available to us. Thus we find that, according to the petitioner's polling agent. Sheo Prasad, the Presiding Officer of polling station Gadariya asked the polling agents of all the candidates to leave the polling booth soon after the close of the poll and before the sealing of ballot boxes and other packets. Respondent No. 1's polling agent, on the other hand, swears that he stayed there till the Presiding Officer put the several papers into packets, sealed them and the ballot boxes and wrote some thing in English suggesting thereby the preparation of accounts of the ballot papers used that day. So there is an oath against an oath. The gentleman who worked as Presiding Officer there is not available. The petitioner's polling agent, Sheo Prasad has also produced his notes PW. 3/1 showing the serial number of ballot papers received by the Presiding Officer for use at Gadariya polling station, and those which were used by him that day. The same gentleman worked as Presiding Officer at Saman and Pandariya polling stations. At Saman the Presiding Officer is said to have supplied to the petitioner's polling agent (PW. 3) the serial numbers of the ballot papers received by him and also those which were issued by him that day. When he was so helpful to PW. 3 at Saman, it does not stand to reason why he would not allow PW. 3 even to stay in the polling booth during the sealing of the ballot boxes and other packets made by the same Presiding Officer. No reason has been assigned for this sudden change in the attitude of the same Presiding Officer towards PW. 3 particularly when RW. 7 was allowed to stay there in order to watch the process of sealing the boxes etc. and preparation of accounts after the poll. At any rate the verbal testimony of PW. 3 in support of the petitioner's case that all the polling agents of Gadariya polling station were turned out of the polling booth after the close of the poll is not at all supported by any corroborative evidence. Hence we do not feel inclined to accept the un-corroborated testimony of PW. 3 on this point.

15. (d) Next it is contended that the Presiding Officer did not prepare any accounts of the ballot papers used on particular dates of polling after the close of the poll. All the Returns in Form No. 10 (24 in number) have been produced by PW. 1 and exhibited in this case as PW. 1/5 to PW. 1/28. Although the petitioner (PW. 2) states that the Presiding Officer of the 5 polling stations, which the witness attended, prepared the sealed packets of unused, invalid or tendered ballot papers in his presence, as also dictated to him the number of ballot papers to be used at the start of the poll as also the number of the last ballot papers used at the close of the poll, the said Presiding Officer did not prepare any account in Form No. 10 in presence of this witness. PW. 3 the petitioner's polling agent at other 4 polling booths also deposed to the same effect. He was allowed to note the serial number of ballot papers issued by the Presiding Officer for the day and also of those that remained unused at Saman and other Polling Stations. Yet the witness did not see the Presiding Officer preparing the returns which he was required to make under Rule 32 of the R.P. Rules. The Presiding Officer of polling stations Boda, Raipur, Sagra and Mankahri also allowed the same latitude to PW. 4 in the matter of taking notes of the serial number of ballot papers made over to the Presiding Officer and then issued by him on particular dates of polling. As against this Respondent's polling agent, Badri (RW. 2), Kashi Prasad (RW. 6), Shri Gopal Saran Singh (RW. 7), Pratap Singh (RW. 8) and Ramanuj (RW. 9) all swear to have seen the Presiding Officers

of the different polling stations preparing accounts of the ballot papers in Form No. 10. Some mistake in the figures given in some of the returns in Form No. 10 have been pointed out to us. We shall presently deal with them while considering the petitioner's contention in regard to the discrepancies in the number of ballot papers issued at polling stations Gadariya, Pandariya and Saman and actually found in the ballot boxes of these polling stations as given in Form No. 10 of each of these polling stations. Such mistakes or cleriacl errors would not have occurred, had these Returns in Form No. 10 not been prepared by the Presiding Officer at the close of the poll each day. Hence we prefer to accept the sworn testimony of the respondent's witnesses that such Returns in Form No. 10 were in fact prepared by the Presiding Officers at the end of the day soon after the close of the poll. It may be that the petitioner's polling agent did not wait there till the Presiding Officers finished all their work of sealing the packets and boxes and then preparing the Returns. Under Rule 33 of the R.P. Rules the Presiding Officer was not bound to prepare such an account in Form No. 10 in presence of the candidates or their polling agents immediately after the polls were over. They were to prepare these accounts as soon as practicable after the close of the poll and make over the same along with the packets referred to in Rule 32 and the sealed ballot boxes to the police guard. Thus we find no substance in this contention of the petitioner.

16. (e) It has been further alleged in clause (e) of para. 7 of the petition that the Returning Officer failed to prepare an account of the ballot papers counted by him under Rule 49 in presence of the petitioner of his agent, nor did he permit the petitioner or his counting agent to take a copy of the extract from such Returns. Returns in Form Nos. 14 and 16 have been produced before us. The former are 15 in number and bear Exts. PW. 1/29 to PW. 1/43 while the one in Form No. 16 has been marked. Thus we find that the Returns required under rule 49 were in fact prepared by the Returning Officer on the day when counting of votes of this constituency took place inasmuch as they are dated 21st January, 1952. It is possible the petitioner or his counting agent did not actually see the said Returns being written out soon after the counting had been finished. The Returning Officer had to announce the result of his counting just after the counting was over. He had also to send information thereof by wire to the Election Commission. He could not have done these things in absence of such Returns in Form Nos. 14 and 16. As stated by the Petitioner (PW 2) he requested the Returning Officer to explain the shortage of about 500 ballot papers polled at polling station Pandariya and also noticed that in the ballot boxes of Gadariya polling station only 285 ballot papers had been issued. The petitioner's counting agent Sheo Prasad also says "the petitioner, Mohan Singh had represented to the Returning Officer the shortage of about 500 ballot papers cast at Pandariya polling station, saying that 940 ballot papers had been issued there, whereas 432 ballot papers were found in the ballot boxes. The Returning Officer could not explain this discrepancy. The petitioner also pointed out to the Returning Officer the excess of 23 votes which were found in the ballot boxes used at polling station Gadariya. PW. 2 further affirms that after the counting the Returning Officer did not prepare or verify the account which had been prepared by the Presiding Officers. The Socialist candidate Shri Janardan Prasad (PW. 6) also was aware of the excess ballot papers found in the ballot box of Gadariya polling station and of shortage of about 500 ballot papers found in the ballot boxes of Pandariya polling station on a reference to the figures in Form No. 10. The total number of ballot papers found in the ballot boxes of each candidate of at least these polling stations must have been noted by the Returning Officer. If this was not done, how could the petitioner, his counting agent and the Socialist candidate know those figures and discover the discrepancies? This also shows that the Returns in Form No. 10 were also there before the Returning Officer at the time of counting agents and the candidates as well as their counting agents had access to them. Probably the Returning Officer had on that day, no time to grant to the petitioner or his agent, copies of the extracts made by him because he was so busy with the counting of votes of different constituencies which came in quick succession one after the other. Therefore we are not prepared to accept the petitioner's contention about the non-preparation of the Returns in Form Nos. 14 and 16 by the Returning Officer after the close of the counting.

17. (g) It has next been urged by the Petitioner that when on 26th January, 1952 he inspected the several Returns in Form No. 10 prepared by the Presiding Officer of Saman, Gadariya and Padariya and compared them with the extracts prepared by the Returning Officer after the counting of votes, he discovered the following discrepancies between the entries in Form 10 and those noted by the Returning Officer as a result of counting:—

(i) that out of 1,100 ballot papers which had been entrusted to the Presiding Officer for use at Saman, he issued 388 ballot papers to the voters

and invalidated 2. So he should have returned 710 ballot papers to the Returning Officer as unused. But actually 686 ballot papers were returned. So 24 ballot papers remain unaccounted for;

(ii) that 900 ballot papers had been made over to the Presiding Officer for use at Gadariya out of which he issued 283 ballot papers to the electors, 12 were found to be invalid and 605 ballot papers were returned as unused. But at the time of counting, 306 ballot papers were found in the ballot boxes of the different candidates at that Polling Station. So 23 ballot papers were found in excess of the total number of the ballot papers which had been issued by the Presiding Officer there;

(iii) that according to the entries in Form No. 10 relating to Polling Station Padariya, the Presiding Officer had issued to the voters 940 out of the total number of 1,400 ballot papers entrusted to him and 14 were invalidated. At the time of counting only 432 ballot papers were found in the ballot boxes of all the candidates at that Polling Station;

(iv) that the Returning Officer could not explain to the Petitioner and his counting agent the above discrepancies.

18. We have examined and considered these matters very closely. Although in Form No. 10 of Polling Station Saman Ex. PW. 2/1 1,076 ballot papers are shown to have been received by the Presiding Officer, the latter actually received 1,100 ballot papers of serial numbers 2,55,001 to 2,56,100 were entrusted to the Presiding Officer for use at Gadariya (*vide* Ex. PW. 1/44). It is also true that 388 of valid ballot papers and 2 invalid were issued by the Presiding Officer at Saman and although the entries in Form No. 10 of Polling Station Gadariya Ex. PW. 2 disclosed issue of 283 valid and 12 invalid ballot papers to the voters by the Presiding Officer at Gadariya, 306 ballot papers were actually found in the ballot boxes of the 7 candidates there. We opened the packets of used ballot papers in the boxes of the 7 candidates at Gadariya and examined the serial numbers of the ballot papers contained in these boxes.

We found 3 ballot papers of Serial Nos. 256086, 256084 and 256083 in the ballot box of Shri Janardan Prasad (Respondent No. 2), 2 ballot papers of Serial Nos. 256092 and 256087 in the ballot box of Shri Mathura Prasad (Respondent No. 3), 10 ballot papers of Serial Nos. 256072, 256088, 256082, 256080, 256097, 256096, 256090, 256078 and 256089 in the Petitioner's ballot box, 2 ballot papers of Serial Nos. 256091 and 256081 in the box of Shri Ramayan Prasad (Respondent No. 4), 4 of Serial Nos. 256099, 256098, 256091 and 256085 in the ballot box of Shri Ram Bihari Lal (Respondent No. 5), one of Serial No. 256077 in the ballot box of Pandit Ram Kumar (Respondent No. 6) and one of Serial No. 256094 in the ballot box of Respondent No. 1. So all these ballot papers are covered within the serial number as 2,55,001 to 2,56,100. They had been primarily authorised for use at Saman but were actually found in the ballot boxes of Polling Station Gadariya. Obviously this happened due to the mistake of the Common Presiding Officer of both these polling stations. He seems to have mixed up the bundles of the ballot papers meant for being used separately at each of the two polling stations Saman and Gadariya and issued 24 ballot papers authorised for Saman at Polling Station Gadariya. Then in order to cover up his mistake he entered in Form No. 10 of Polling Station Saman the figure 1,076 instead of 1,100 as the total number of ballot papers received by him. We have also looked into the marked electoral roll of Polling Station Gadariya and found that in fact 319 ballot papers were issued there and not 295 as noted in Form No. 10 of Gadariya Polling Station. The note marked B made by PW. 3 in his rough Note Book PW. 3/1 also shows '319' subsequently corrected as 283. Although these notes have little evidentiary value in view of the fact that the note book has been produced by PW. 3 unsummoned at a very late stage yet it indicates factum of issue of 319 ballot papers to the voters at Polling Station Gadariya.

Thus, the shortage of 24 ballot papers shown in Form No. 10 of Polling Station Saman is made up by the excess of about the same number of ballot papers found in the ballot boxes of the different candidates at Polling Station Gadariya. We have stated above that these extra ballot papers (23 or 24) bear the serial number of those which had been authorised for use at polling station Saman. Hence the discrepancies which at the first sight appeared to be material are not real ones. As pointed out above it was due to the mistake of the common Presiding Officer in issuing 23 or 24 of the ballot papers meant for use at Saman to the voters of Gadariya polling station. The apparent discrepancies thus stand sufficiently explained.

19. The entries in Form No. 10 relating to Polling Station Padariya Ex. PW. 2/4 against item Nos. 3 and 6 are evidently wrong. The total number of ballot papers

made over to the Presiding Officer S. Krishna was 1,400 only as noted against item No. 1 of the Distribution Register of Ballot Papers (Ex. PW. 1/44). If 940 ballot papers out of the total number of 1,400 were to be found in the ballot boxes as stated against item Nos. 6 and 14 ballot papers had been cancelled as entered in item No. 4 of Ex. PW. 2/4, the Polling Officer could not return 954 ballot papers to the Returning Officer. With reference to Form No. 14 (Ex. PW. 1/30 to 43) we find that only 432 ballot papers were found in the ballot boxes besides 14 which had been cancelled. So instead of noting the figure 940 against item No. 3, the Presiding Officer wrongly stated that figure against item No. 6. The correct figure against item No. 6 should have been 432. It is apparently a clerical error inadvertantly committed by the Presiding Officer out of which much capital need not be made. Thus the petitioner's grievances, as made out in clause (g) of para. 7 of the petition, are based on misconception of facts and incorrect entries in Form No. 10 of the 3 polling stations, namely Saman, Pandariya and Gadariya.

20. (h) The petitioner (PW. 2) and his counting agent (PW. 3) both affirm that when the ballot boxes were brought for the purposes of counting their ballot papers, they found lac seals of almost all the boxes except a few broken and noticed creases in some of the paper seals below the window. On a verbal objection on this score, they were told by the then Chief Commissioner, Shri Pillai who was present there that the breakage of the lac seals and creases in some of the paper seals were immaterial when such paper seals were not torn or broken. PW. 6 has also deposed to the same effect. RW. 10 (Respondent No. 1), on the other hand, swears that when he went to the counting hall at about 2 or 3 P.M., he found the ballot boxes arranged candidatewise. Thereupon he and the petitioner Shri Mohan Singh and other candidates examined the ballot boxes and found their seals intact. The lac seals over some of the ballot boxes were liable to be damaged in course of transit. The boxes were generally carried in a truck, piled one upon the other. Thus they naturally received jerking and hence, no wonder, if the lac seals placed over the top of these boxes got damaged or broken. Creases on the paper seals of 3 or 4 ballot boxes may also be due to the fact that they were pasted loosely. So even if lac seals over some of the ballot boxes had been damaged and there were creases in the paper seals of 3 or 4 ballot boxes, they would be of little consequence and the same would not tantamount to the contravention of the provisions of the R.P. Act inasmuch as the paper seals as well as the lac seals had been in fact put in accordance with the R.P. Rules.

21. (o) In sub-clause (o) of para. 7 of the petition merely presence of Shri Pillai, the then Chief Commissioner of Vindhya Pradesh in the counting hall while the counting was in progress is mentioned and it is stated that he was seen going round the tables. PWs. 2 and 6 also have spoken of Shri Pillai's presence at the time of counting. Being at the head of the Administration we think that Shri Pillai could very well supervise the arrangements for counting of ballot papers in order to prevent any disorder and maintain a peaceful atmosphere there. It has not been definitely avered in this sub-clause (o) of para. 7 of the petition that Shri Pillai exercised any undue influence over the Returning Officer. In absence of any such allegation the presence of Shri Pillai as the supervising authority in the counting hall loses all its importance, in asmuch as the same does not, in any way, affect the result of the election.

22. *Issue No. IV(2) and* (3).—On careful examination and consideration of the petitioner's pleas embodied in clauses (b), (c), (d), (e), (h) and (o) of para. 7 of the petition we have found above that none of the petitioner's above pleas have been proved and there has been no contravention of the R.P. Act or Rules made thereunder. So in view of our above finding the questions involved in these two sub-issues do not arise. The learned advocate for the Petitioner in his argument relied upon the above discrepancies in the matter of shortage of 24 ballot papers to be used and used at Polling Station Saman, excess of 23 ballot papers issued at Polling Station Gadariya and the apparent inconsistent entries in Form No. 10 of Polling Station Padariya as the cricumstances which would indicate tampering with the ballot boxes and their contents. Since all those discrepancies have been found to be unreal, the circumstances relied upon by the Petitioner's advocate do not exist. Hence we find that the tampering of the ballot boxes has not been proved.

23. *Issue No. V(1), (2) and* (3).—In course of his argument the learned advocate for the petitioner very candidly conceded that his client has no evidence to support his allegation about the inadequate arrangements for the transport and safe custody of the ballot boxes and so he did not press this issue. Hence the issue as a whole is decided in favour of respdt. No. 1.

24. *Issue No. VI(1).*—So far as the petitioner's allegation about active support of respdt. No. 1's candidature and open canvassing and exercise of undue influence

for him by the members of the Congress organisation is concerned, there is not an iota of evidence on petitioner's side to prove the same. In the list of particulars attached to the petition, Inspector of police Pt. Dharmdas Misra, Postmaster Pt. Brijmohan Prasad of Raipur and Pt. Jamuna Prasad postman of Raipur are said to have canvassed amongst the voters at polling station Raipur A and Raipur B for respdt. No. 1 and under serious threats asked and pursuaded them not to vote for the petitioner. Similarly Pt. Jagdish Pd., Accountant of Durbar College, Rewa, is said to have openly canvassed for respdt. No. 1 at polling station Mankahri, Sagra and Boda by asking them not to vote for the petitioner. The patwari of halka Rahat is also said to have distributed some leaflets on behalf of respdt. No. 1 and canvassed for him. P.Ws. 2 to 4 have named Shri Dharamdas, Pt. Brijmohan Prasad and Pt. Jamuna Pd. as the persons whom they saw canvassing the voters at polling stations Raipur A and Raipur B outside the polling booth. The postmaster had been, according to P.W. 2, canvassing the men of that village for a month before the date of polling. P.W. 4 affirms to have seen Pt. Jagdish Prasad Accountant asking the voters to cast their votes in the box bearing the symbol of bullocks. This, however, he did outside the polling area. According to this witness (R.W. 4) Jamuna Pd. postman had been canvassing for the Congress candidate for 25 days before the polling in as much as he used to distribute bulletins and displayed the picture of Pt. Jawaharlal Nehru at different places.

P.W. 7 Shri Janardan Prasad names the patwari Nand Kishore—as the person who came to his village Lapta, 2 or 3 days before the polling and asked the people to vote for the emblem of bullocks because it was the Congress Raj. This witness in cross-examination however, admits that the canvassing by the patwari had no effect on him. Accountant Jagdish Prasad figures as R.W. 1. He definitely denies to have spoken to any voters or to have asked them to vote for Congress and not for the petitioner. He further states that on the day of polling at Mankahri, he was on duty in Durbar College office and he was not present at Boda on the date of polling there and that he was on that day lying ill at Rewa. R.W. 2 who worked as polling agent of respdt. No. 1 at polling stations of Rahat, Chaura and Hardi swears that patwari of halka Rahat and Hardi was on duty on the polling booth to identify the voters at the time of issuing chits to them. That patwari, according to P.W. 2, never canvassed any voters nor any one complained against him to that effect. R.W. 2 asserts to have been issuing Purzas on behalf of Congress candidate outside the polling area at Raipur. The house of Jamuna Prasad postman was opposite to the place where R.W. 2 sat issuing Purzas. The latter never saw Jamuna Prasad, Pt. Dharmdas and Brijmohan Prasad canvassing for any party candidate. As stated by R.W. 2 these 3 persons came and cast their votes on the 13th January and went away. They did not display any picture of Pt. Jawaharlal Nehru. Nand Kishore patwari of halka Rahat has been examined as R.W. 3. He denies to have ever gone to Lapta village or to have canvassed any of the voters there for the Congress candidate. He has not been cross-examined. R.W. 4 is a goldsmith, resident of village Raipur. When he went to cast his vote at Raipur polling station on 11th January, he did not see Pt. Dharamdas and Brijmohan Prasad near the polling station. He saw Jamuna Prasad who went into the polling booth, cast his vote, and went away without speaking to any one. As stated by this witness Brijmohan Prasad and Dharmdas had been on bad terms with respdt. No. 1, while son of Shri Dharmdas was working for the Socialist candidate. R.W. 5 Shri Munawar Beg also resident of village Raipur has stated on oath that Jamuna Prasad came to the polling booth on 11th January, cast his vote and went away while Dharamdas and Brijmohan Prasad came to the polling station on 13th January only for the purpose of casting their votes and left the polling area without speaking to any voter. None of them canvassed for any congress candidate nor displayed the picture of Pt. Jawaharlal Nehru. The statements of these two witnesses in chief have not been subjected to cross-examination. R.W. 6 polling agent of respdt. No. 1 at Sagra and other polling stations swears that Jagdish Prasad of Durbar College came to cast his vote at Sagra and left the polling area without doing any canvassing for any candidate. Respdt. No. 1 (R.W. 10) and his son (R.W. 7) have asserted that there has been a longstanding dispute between them and Shri Dharamdas S.I., Postmaster Brijmohan Prasad and postman Jamuna Prasad. They further speak of being on bad terms with Rabindan Singh (P.W. 8). P.W. 8 also admits of a proceeding under section 107 Cr. P. C. that went against him in which Dharamdas and Brijmohan Prasad appeared as witnesses against him. In fact of the above evidence before us and in absence of any written complaint against the Government officials filed by the petitioner or his polling agent, it is difficult for us to accept the petitioner's allegation on this score. Hence we find that the petitioner has not been able to prove that V.P. Government officials actively canvassed for respdt. No. 1 or exercised any undue influence and coercion etc. upon the voters with a view to secure the defeat of K.M.P. Party.

In view of our above finding the other two parts of this issue do not arise and so the issue, as a whole, is answered in the negative.

Issue No. VII.—The main relief sought by the petitioner here is that the election of the opposite party No. 1 and the election of this constituency as a whole be declared as void. Evidently the prayer made is in the alternative and there is no question of joinder of two reliefs. Hence respondent's objection regarding the joinder of two reliefs is baseless. This issue is, therefore, decided in petitioner's favour.

Issue No. VIII.—From the above findings it follows that the petitioner has failed to make out a good case for setting aside the election of respdt. No. 1, or the election of this constituency as a whole. The result is that the petition has to be dismissed and is hereby dismissed. The petitioner shall pay Rs. 150 as costs to the respdt. No. 1.

Shri N. N. Mukarji assisted by Shri Keshau Prasad and Shri Vamangopal pleaders appeared for the petitioner. Shri A. P. Pande Advocate assisted by Shri Harish Kumar Shrivastava and Shri G. P. Misra appeared for respdt. No. 1.

ANNOUNCED

The 20th August, 1953.

E. A. N. MUKARJI, *Chairman.*
G. L. SRIVASTAVA, *Member.*
U. S. PRASAD, *Member.*

ANNEXURE A

FINDINGS

Out of the election petitions pending before this Tribunal there are 11 such petitions in which written pleas have been put in by parties and in which among other matters a plea of non-joinder of parties has been raised, which calls for decision. In order to explain the nature of the pleas that have been raised in these petitions, we give below the number of such petitions and the issues framed on the question of non-joinder.

1. *File No.* 1/74.—I(a) Was Shri Sheo Kumar Sharma a necessary party to this petition?

(b) If so, what is the effect of his non-joinder?

(*Note.*—It may be noted that Shri Sheo Kumar Sharma mentioned in this issue was a candidate who had withdrawn his candidature within the prescribed period.)

2. *File No.* 2/140.—XVI Were Shri Pancham Lal Jain, Shri Vaidya Jamuna Prasad and Shri Shambhu Nath Shukla necessary parties to this election petition and what is the effect of their non-joinder?

(*Note.*—The persons mentioned in this issue are those who had been nominated but had withdrawn their candidature within the prescribed period.)

3. *File No.* 3/141.—I(a) Is the constitution of the array of the respondents defective by reason of non-joinder of Shri Ravendra Singh and Shri Madsudan Prasad?

(b) Is such defect, if any, fatal to the maintenance of the petition?

(*Note.*—Persons mentioned in this issue are stated to have withdrawn their candidature within the prescribed period.)

4. *File No.* 4/164.—IV(a) Were Shri Abhairaj Singh, Shri Ram Pratap Singh and others who were nominated and who are alleged to have withdrawn, necessary parties to this petition

(b) If so, what is the effect of their non-joinder?

5. *File No.* 9/237.—I(a) Whether the candidates who had been nominated and who had withdrawn their candidature, were necessary parties to this petition?

(b) If so, what is the effect of his non-joinder?

6. *File No.* 10/238.—I(a) Was Shri Indra Bahadur Singh who was a nominated candidate and who had withdrawn his candidature, a necessary party to this petition?

(b) If so, what is the effect of his non-joinder?

7. *File No.* 11/239.—I(a) Were the candidates, who had been originally nominated but who had withdrawn their candidature under Section 37 of the Representation of the People Act, necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

8. *File No.* 12/249.—I(a) Were Shri Somchand Jain and Shri Chhotey Lal necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

(*Note.*—It is to be noted that both the persons mentioned in this issue namely Shri Somchand Jain and Shri Chhotey Lal, were the candidates whose nominations had been rejected).

9. *File No.* 13/260.—XVI II. Was Shri Shankar Prasad a necessary party to this petition and what is the effect of his non-joinder?

(*Note.*—It may be noted that Shri Shankar Prasad was a candidate who had been nominated but who had withdrawn his candidature within the prescribed period.)

10. *File No.* 14/304.—I(a) Were Shri Dan Bahadur Singh, Shri Saraswati Prasad and Shri Govind Singh necessary parties to this petition?

(b) Is their non-joinder fatal to the petition?

(*Note.*—It may be noted that Shri Dan Bahadur Singh and Shri Govind Singh were candidates whose nomination papers had been rejected and Shri Saraswati Prasad is stated to have withdrawn his candidature.)

11. *File No.* 15/307.—I(a) Were Shri Puran Chand and Shri Polwa necessary parties to this petition?

(b) If so, what is the effect of their non-joinder?

(*Note.*—It may be noted that both the persons mentioned in this issue were candidates whose nomination papers were rejected.)

It is apparent, from the above list, that in two of the above petitions namely No. 12/249 and 15/307, and partly in No. 14/304, the question arises whether a candidate whose nomination paper was rejected at the time of scrutiny is a necessary party to these election petitions, under Section 82 of the Representation of the People Act, 1951, and what is the effect of his non-joinder.

In the other 8 cases and in the case of one person in file No. 14/304 the question is whether candidates whose nomination papers had been accepted at the time of scrutiny but who had later withdrawn their candidature within the prescribed time, were necessary parties to these petitions, under the provision of section 82 of the Representation of the People Act, 1951 and if so, what is the effect of their non-joinder.

These preliminary issues have been argued at length before us by Mr. A. P. Pandey, Advocate for the respondents who had raised the plea of non-joinder, and by Mr. R. N. Basu on behalf of the petitioners, in the different cases. They have been assisted by other lawyers representing both the parties in all the petitions. We proceed to discuss the first question enunciated above namely, whether a candidate whose nomination paper had been rejected, is a necessary party within the meaning of Section 82 of the Representation of the People Act, 1951.

On this point we have heard the rather ingenuous arguments advanced by Mr. A. P. Pandey. He has urged before us that a candidate whose nomination paper has been put in at the proper time and place, and which bears the signatures of a proposer and a seconder, and is accompanied by a declaration of appointment of a election agent and also by a receipt of deposit of security, has become duly nominated thereby. In case the candidate is a member of Scheduled Tribe, a further declaration has to be attached with the nomination paper. The learned counsel has argued that, having done these things, the candidate '*duly nominates himself*' without the intervention of any Returning Officer. In other words, this contention amounts to this that, by the unilateral act of the candidate in putting in his nomination paper, along with certain declarations and receipt, gives him the status of a "duly nominated candidate". We are unable to see the soundness of this proposition as advanced by Mr. A. P. Pandey. According to the Law Lexicon of British India by B. R. Aiyar (Edition of 1940) the significance of the word '*duly*' has been given as some thing done "regularly" fitly, in a suitable or becoming to law or some rule or 'Law'. Thus it is clear from these interpretations that in order to become a *duly nominated* candidate, the nomination paper must stand the test of scrutiny provided in Section 36 of the Representation of the People Act, 1951. This section provides that on a date fixed for the purpose, the Returning Officer has to examine the qualifications of the candidate and of his proposer and seconder, also to examine the signatures in order to detect fraud if any and to judge whether the provisions of Sections 33 and 34 have been complied with. Unless and until the Returning Officer finds the nomination paper in order and according to the

requirements of law, it will be idle to say that the candidate has become duly nominated.

The learned counsel has referred to Section 100 of the Representation of the People Act Clause C and has urged a wrongful rejection of a nomination paper is sufficient to avoid the whole election. This contention has, however, no bearing on the question now before us, because it is a matter which would be gone into if any case, if pleaded by either party, even in the absence of the candidate whose nomination paper had been rejected.

It may be mentioned here that a candidate whose nomination paper had been rejected, could if he so desired either come in as a petitioner or as a respondent under the provision of Section 90, sub-section 1 of the Representation of the People Act, and he could also file recriminations under Section 97 of the said Act. Hence the absence of such a person from the original list of respondents can not be said to be prejudicial to the proper decision of the case, over and above the fact that Section 82 does not make it necessary to implead him.

The learned counsel for the respondents has not been able to cite any previous decision in support of his proposition namely that a candidate whose nomination paper was rejected is a necessary party under Section 82 of the Representation of the People Act.

The learned counsel for the petitioners has argued that Sections 33 to 36 of the Representation of the People Act lay down the necessary requisites which would render a person a "duly nominated candidate". We agree that Sections 33 and 34 contain the necessary requirements which have to be fulfilled by a candidate when filing a nomination paper, and Section 36 lays down the provisions for testing the due compliance with the requirements of law. We consider that these different steps in the process of nomination comprise a series of acts which must be fulfilled before a person can claim to be a "duly nominated candidate."

For these reasons we are of the opinion that a candidate whose nomination paper has been rejected at the time of scrutiny can not be called a duly nominated candidate and hence he is not a necessary party within the meaning of section 82 of the Representation of the People Act while holding this view, we are not obvious of the provisions of Section 100(C) which provides that an election may be declared to be wholly void, if the result of the election has been materially affected by the improper acceptance or rejection of any nomination. It was open to the parties to an election petition to raise such plea and seek a decision thereon. It was open to a rejected candidate as well to come forward and be joined as a respondent in compliance with Section 90(1) within the prescribed period.

II. We have found above that a candidate cannot be considered to have been duly nominated before his nomination papers are scrutinised by the Returning Officer, under Section 36 of Representation of the People Act and accepted by him. The next question is whether, after such scrutiny, the candidate whose nomination paper has been found to be in order becomes a person who must be made a party under the provision of Section 82 of the Representation of the People Act, which lays down that candidates who were "duly nominated at the Election" shall be joined as respondents. In the cases now under consideration both parties admit in this connection that the candidates whose non-joinder is in dispute, were those whose nomination papers had been accepted at the time of scrutiny, but who later withdrew under Section 37 R. P. Act.

We wish to remark at the outset that we must presume the framers of law to have provided for results which are reasonable and effective and not such as would lead to undesirable or harmful consequence. Proceeding on this principle, we must assume that Section 82 R. P. Act contemplates the impleading of living and existing persons and not of persons whose existance has been terminated by Act of God or by operation of law.

In the case under consideration certain candidates had of their own choice, availed themselves of the opportunity provided in Section 37 R. P. Act and *"terminated their candidature"* and had this fact published in an official list (u/s 38 R. P. Act) for the information of whole Electorate. By this act of the candidates, which has been officially recognised and accepted, they had ceased to exist in the election filed. They could not even withdraw their notice of withdrawal once given within the prescribed period. *By operation of Election law therefore such candidates had ceased to exist even as candidates, what to speak of "duly nominated candidates".*

We can not conceive of any interpretation of Section 82 R. P. Act which would compel a petitioner to bring back to life those candidates whose existence as such

ceased after their withdrawal. Such candidates had publicly left the arena for good, and to drag them again by *force* into the later stages of the Election conflict would be, in our view, meaningless. Of course such candidates on reverting to the position of voters after their withdrawal, had every right as voters, to come in either as petitioners or, to apply to be joined as Respondents within the period prescribed by Section 90 sub-section (1) R.P. Act or to file recrimination U/S 97 R. P. Act. Not having chosen to do so, we fail to see what interests of justice would be served by impleading them at the instance of the contesting respondents, rather this steps would impede justice by helping those respondents who may desire to prolong the cases unnecessarily. For this reason we are of the opinion that such candidates, who had withdrawn U/S 37 R. P. Act are not necessary parties to these petitions with meaning of Section 82 R. P. Act.

As regards the cases cited before us we may remark generally that the argument in such cases decided under the Election Rule of 1920 are of no help to us, because under those laws no time limit was prescribed for withdrawal, and when therefore the act of withdrawal was not considered such a solemn and serious act of self effacement as under the present law. We notice the trend of the change in the law by referring to the Shahabad case decided recently (1947) when it was found that non-joinder of a candidate who had withdrawn is not fatal (See Indian Election Cases Sen & Poddar pages 750 and 751). See also Ludhiana Mohammadan Rural Constituency Case (Sen and Poddar page 970).

Our view also find support in the order passed in a recent case by the Election Tribunal of Allahabad in Election petition 316 of 1952, in which it was found that a candidate who had withdrawn his candidature, is "no larger actually interested in the election" and is not a necessary party.

Mr. Pande has also cited a Baroda case No. 19 of 1952 published in the *Gazette of India Extraordinary*, dated 11th August 1952. In that case the petitioner was a candidate whose nomination paper had been rejected. He alleged that the rejection was wrongful and improper and that the result of the election was materially affected thereby. In that case there was no issue about non-joinder of candidates who might have withdrawn their candidature. So any remarks made by the Tribunal on this question were in the nature of obiter.

II. In this view of the matter we hold that the candidates who withdrew their candidature under Section 37 of the Representation of the People Act, 1951 are not necessary parties within the meaning of Section 82 of the said Act.

ANNOUNCED

The 26th November, 1952. (Sd.) E. A. N. MUKARJI, *Chairman*.

(Sd.) UMA SHANKAR PRASAD, *Member*.

OPINION RECORDED BY SHRI G. L. SHRIVASTAVA RE: NON-JOINDER

1. Having unanimously recorded by the finding on the issue of non-joinder of a candidate whose nomination was rejected by the Returning Officer under Section 36 of the Representation of People Act 1951, the Tribunal has proceeded to consider and decide the issue of non-joinder of candidates whose nomination was accepted but who duly withdrew their candidature within the time prescribed by Section 37 of the Act and who, therefore, were not included in the list of valid nominations under Section 38 of the said Act. This issue is common in the cases referred to in the findings already recorded and the finding hereinafter recorded would be the finding on the indentical issue of law in those cases and would form part of the file of those cases.

2. This common issue of law may be stated thus. Are the candidates whose nomination was accepted under Section 37 of the Representation of People Act 1952 but who withdrew their candidature under section 38 of this Act a necessary party to the Election Petitions in question within the meaning of Section 82 of the Act.

3. The decision of this issue depends on the determination of the meaning and signification of the expression "duly nominated" used in section 82 of the Representation of the People Act 1951 hereafter referred to as the Act which provides as follows:

"*Parties to the petition.*—A petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself he was so nominated".

4. The learned counsel for both sides argued this point at length with ability and vigour. This expressing "duly nominated" has not been defined in the Act. I have tried to interpret these words after a careful and intigrated study and examination of the various provisions of the Act where the words occur in the light of the accepted cannons of interpretation. With the utmost respect for my learned colleagues I am constrained to say that I have not been able to agree with the construction put by them on this expression used in section 82 of the Act. I therefore hold that a candidate whose nomination was accepted under section 37 but who withdrew his candidature under section 38 should be regarded as "duly nominated" within the meaning of the Section 82 of the Act. The reasons for this opinion have been set out below.

5. "In the absence of any judicial guidance or authority dictionaries can be consulted". (Maxwell: the intrepretation of statutes 9th edition page 35 where the above passage has been reproduced from Merr V Kennedy (1942)/K.B. 409, 413). I confess that dictionaries which were available have not given me much guidance in construing the expression duly nominated used in the particular context of the Act.

6. Before calling to my aid the method of view in this expression in the historical setting *i.e.* in the light of its use in previous legislations and another method of ascertaining its interpretation in *Part materia* statutes I would do well to examine all the parts of this Act where this expression is used for appreciating its true meaning. In "the interpretation of statutes" (5th Edition) Maxwell remarks at page 30 on the authority of Lord Wsler M. R. and Fry. L. J. in the case Lancashire and Yorks Ry. Co. V. Knowles 20 Q.B.D. 391 that "such a survey is often indispensable even when the words are the plainest, for the true meaning of any passage is that which (being permissible) best harmonises with the subject and with every other passage of the statute". In section 33 of the Act words "duly nominated" have been used in sub-section 3 and in the second and third provisos to this sub-section in connection with some declarations and certificate.

7. According to sub-section (3) which follows the requirement of the filling of a duly completed nomination paper as prescribed in sub-section (1) "no candidate shall be deemed to be duly nominated" unless a declaration of appointment of an election agent is delivered along with the nomination paper. So also " no candidate shall be deemed to be duly nominated" unless the formalities prescribed in the said two provisions are complied with.

8. The relevant part of section 34(1) of the Act stands thus "A candidate shall not be deemed to be duly nominated unless he deposits or causes to be deposited in the case of an election to Parliament (other than a primary election) a sum of five hundred Rupees.....XX".

9. Then follow sections 35 and 36, relating to the scrutiny of nominations. Under section 36 (2) the Returning Officer has to decide all objections and may refuse any nomination on any of the five grounds mentioned in it. Again according to sub-section (3) of this section the nomination of a candidate can not be refused on the ground of irregularity in respect of a nomination paper if "the candidate has been *duly nominated* by means of another nomination paper *in respect of which no irregularity has been committed*".

10. Next section 37 refers to the withdrawal of candidature within the prescribed time by means of a duly completed notice in writing. After some formalities the Returning Officer has to publish a list of valid nominations under section 36 in accordance with Rule I and II of the Representation of the People (conduct of Elections and Election Petitions) Rules 1951. Section 39 refers to nominations for the Council of State and Legislative Councils and the aforesaid provisos have been made applicable to these nominations. Then the Chapter I (Nominations of Candidates) of Part V ends.

11. It may be said that the method of defining the expression by negative propositions is perceptible in sections 33 and 34 of the Act. It seems to be abundantly clear that a candidate should be deemed to be duly nominated if he satisfies the requirements of law and passes the test of scrutiny.

12. Ordinarily, this class of duly nominated candidates is narrowed down to validly nominated candidates after the withdrawal of candidatures under section 37 and the publication of the list of valid nominations under section 38 of the Act. The crux of the question is whether the words "duly nominated" used in section 82 of the Act include this larger class or is to be deemed to be confined to the smaller class of valid nominations after the withdrawal. In my opinion these two classes have distinctive status and legal character under the Act for

the purposes of election and proceedings connected with it. They have been used in the statute in a clear and unambiguous manner and in some places in juxtaposition which leaves no doubt about their district meaning and signification.

13. Again, in Chapter II section 46 of the Act the following passage occurs in the beginning of the section: "A candidate who has been duly nominated under this Act and who has not withdrawn his candidature is the manner and within the time specified in sub section 3.....". Here due nomination under the Act has been recognised and the Act of withdrawal is not contemplated as extinguishing the status acquired already as a duly nominated candidate.

14. The Central Government has framed the rules for carrying out the purposes of the Act under section 169 thereof. These rules are described as "the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951". The question is whether any part of these rules can be used in construing the expression in question. According to Maxwell general rules and forms made under the authority of an Act may be referred to for the purpose of assisting in the interpretation of the Act (page 39 of the Edition of the peasise herein before adverted to). In Rule No. 2 clause (f) stands as follows "Validly nominated candidate" means a candidate who had been duly nominated and has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 37 or in that sub-section read with sub-section (4) of section 38, as the case may be. This definition confirms the view expressed above.

15. I am not prepared to think that if the framers of the Act intended that only validly nominated candidates, that is, duly nominated candidates who had not withdrawn their candidature, should be impleaded as respondents, they would not have used the words as used in section 82 of the Act. The language of this section would have been different if this was the object and intention. As it is, it admits of no doubt. The language is plain and such language best declares without more, the intention of the law giver and is decisive of it. The rule of construction is "to intend the legislature to have meant what they have actually expressed". Maxwell goes further and says "It matters not, in such a case, what the consequences may be". Undoubtedly if two meanings are possible and one leads to absurdity, inconsistency or injustice, the other may be preferred. But if two meanings are not possible, the task of interpretation does not arise. In this connection it may be safely remarked that in construing the words "duly nominated" used in section 82 of the Act as I have done, no question of absurdity or injustice arises. The argument based on absurdity or injustice has been described as a "Snare" unless absurdity or injustice is extremely gross and palpable. In this matter there is no absurdity or injustice involved in this interpretation at all. This point will be elucidated further hereafter.

16. The legislation repealed by section 171 of the Act *viz.* the Indian Election Officers and Inquiries Act 1920 and other laws relating to this subject may now be looked at for the purpose of ascertaining the meaning of the expression in question. By other laws is meant the Order in Council known as the Government of India (Provincial Elections) Corrupt Practices and Election Petition Order 1936 dated 3rd July 1936 and the Acts of Provincial Legislatures and Rules framed to regulate the form of Election Petitions and the persons who are to be made parties thereto and other matters of procedure under para. 6 of Part III of this Order. By the authority of this para, the Provincial Governments could authorise the Governor to exercise his individual judgment to dismiss petitions for non-compliance with prescribed requirements. The provinces framed their own Rules which indicate that uniformity was lacking. To illustrate this point the case of Shahabad Mohammadan Rural Constituency 1946 (Manjoor Husain *Vs.* Gholam Mohiuddin) reported at page 746 of Indian Election Cases by Sen and Poddar may be referred to. It was held in this case that non-joinder of nominated candidate who had withdrawn from contest was not fatal to the claim for seat and the case of Banaras-*Cum*-Mirzapur cities was distinguished on the ground that the law in V.P. and Bihar differed.

17. In Karnal South General Constituency case (Pt. Mangal Ram V. Chaudhari Anant Ram) reported at page 438 of the same book, it was held that where the petitioner claimed the seat for himself it was incumbent upon him to implead all other candidates who were nominated at the election irrespective of whether their nomination papers were withdrawn before or after the scrutiny or were rejected as a result of the scrutiny. On the same ground the petitioners' claim for the seat was held inadmissible in Ambala and Simla (Mohammadan) Constituency case 1937 reported at page 6 of the same book, though the nominated candidate had subsequently withdrawn.

18. It may be noted that the claim or seat was interlinked with the necessity of joining all nominated candidates as respondents irrespective of the withdrawal

of candidature in the laws of various provinces. These laws do not seem to be absurd or devoid of reason. The author of the "Law of Elections and Election Petitions" (Nanakchand Pandit) opines that the reasons for imposing this duty is that each of the other candidates may have the opportunity to raise recriminations to show that the petitioner is not entitled to this declaration which he claims. Undoubtedly this object has been achieved under section 90(1) of the Act under which any candidate can come in and be joined as respondent within fourteen days of the publication of the petition in the official gazette. But this section requires a candidate to take some steps to be joined as a respondent within prescribed time while section 82 purports to give him the right unsought and unsolicited. This privilege implies special consideration to candidates who entered the arena for election at the first stage and ran the gauntlet of scrutiny successfully but eventually repaired from the arena for reasons of their own. Though they did not go to the polls, the legislature seems to have thought that their status as duly nominated candidates should be recognised in the contest of election petitions which may lead to unthought of results or the transfer of seat from an elected candidate. They may join the conflict, if they so choose, after skulling in their tents but there is no element of compulsion. In this view of the matter, there is no absurdity involved in the legal requirements of their joinder as respondents in an election petition. *Lex est dictamen legisis* the maxim which should normally be applicable. There is no reason to suppose that the aforesaid interpretation of section 82 proves an exception to this rule.

19. In fact section 82 of the Act has unified and rationalised the law prevailing before the Act about the impleading of respondents in election petitions. A petitioner has been served the trouble of relating the joinder of parties to the reliefs claimed. It is therefore provided that all duly nominated candidates should be joined as respondents. What was perhaps contemplated to be a simplification of the matter has led to controversies of vast magnitude about the definition or meaning a "duly nominated candidate". I have had the advantage of reading a copy of the order in election petition No. 316 of 1952 before the Election Tribunal at Allahabad (Shri Saligram Jaiswal *Vs.* Sheo Kumar Pandey and others) in which it has been held that a candidate whose name does not appear in the list of valid nominations cannot be regarded as a duly nominated candidate. With utmost respect to this Tribunal I have not been able to accept this interpretation for the reasons already mentioned. One very much wishes that the expression "duly nominated candidate" used in section 82 of the Act was so defined or explained by the legislature as to be beyond the range of controversy.

20. My finding, therefore, is that duly nominated candidates who have withdrawn their candidature under section 37 of the Act should be joined as respondents in an election petition. But the majority view of my learned colleagues will prevail under section 104 of the Act and would be regarded as the view of the Tribunal. In the circumstances I do not feel called upon to express an opinion whether this Tribunal is competent to order or permit the joinder of such candidates as respondents sump to or on the request of the petitioners concerned.

21. The question of the effect of non-joinder of such respondents does not arise for the practical purposes of these petitions in view of the opinion of the majority on this matter. It may however be said to arise as a sequal to my finding on the issue of non-joinder. But I feel it would be needless to express a definite opinion on this question at this stage of the proceedings. The question of power or jurisdiction of Tribunals to permit amendments in election petitions is likely to arise in some of these cases in future and it may be embarassing to all concerned including myself if I arrive at or express conclusions on this subject. Suffice it to say that in spite of the apparently mandatory language of section 82 the Act has not provided for the summary dismissal of election petitions on the ground of non-joinder of parties, as it has been provided for dismissal for non-compliance with the provisions of section 81, section 83 or section 117 of the Act.

22. The exclusion of non-compliance with the requirement of joinder of parties contained in section 82 from the category of disobedience of other mandatory provisions referred to above meriting the dismissal of petitions significant. This exclusion seems to be based on sound reasons. On the other hand the inclusion of non-joinder of parties in this sternly imperative category would have wiped out the distinction between necessary party and proper party and would have imposed a uniform penalty regardless of the matter and consequence of non-compliance. In statutes sometimes an apparently mandatory provision is regarded as really directory.

(Sd.) G. L. SRIVASTAVA, *Member*,
Election Tribunal, Rewa, V.P.

FINDING OF THE TRIBUNAL.

The unanimous view of the Tribunal is that the non-joinder of candidates whose nominations had been rejected at the time of scrutiny and of those who withdrew their candidature is not fatal to the maintenance of these petitions.

The view of tone of the members of this Tribunal (Shri G. L. Shrivastava) as recorded above however is that a candidate whose nomination papers had been accepted at the time of scrutiny and who withdrew under section 37 of the Representation of the People Act, should have been joined as respondents to these petitions.

The 26th November 1952

(Sd.) E. MUKARJI, *Chairman.*
(Sd.) G. L. SHRIVASTAVA, *Member.*
(Sd.) U. S. PRASAD, *Member.*

ANNEXURE B

IN THE COURT OF THE ELECTION TRIBUNAL VINDHYA PRADESH AT REWA

FINDINGS

In Election Petitions Nos. 6/175, 9/237, 10/238, 11/239, 12/249, 14/304 and 15/307, it has been contended by respondents that these petitions have not been verified in a manner laid down in the Code of Civil Procedure 1908 for the verification of pleadings, and consequently for non-compliance with the provisions of Section 83 of the Representation of the People Act, 1951, these petitions should be dismissed. The petitioners in questions have submitted that the verification clauses in the said petitions are strictly in accordance with the provisions of the Civil Procedure Code and in any case there has been a substantial compliance with such provisions. It is, however, submitted on behalf of all the petitioners referred to above except in petition No. 6/175 that if any technical defects in the verification clause needs amendment, permission should be granted for amending these clauses in the interest of justice, and for this purpose written applications have been filed in these cases.

2. The question of correctness and validity of the verification clauses is common to these election petitions as also the question of amendment, if any. Common arguments were therefore addressed in these cases. It has therefore been deemed fit and proper to decide these issues of preliminary nature by virtue of this order which would deal with the merits of each case and the common question of law involved in them. This course has been adopted with the concurrence of the parties concerned and this order would govern the disposal of various issues arising in these cases.

3. The issues in the cases calling for findings are reproduced below:—

Petition No. 6/175.

I(a) Is the petition properly verified?

(b) If not, what is the effect?

(c) Should leave, if applied for, be given to the petitioner to amend the verification?

Petition No. 9/237.

II(i) Has clause (i) of para 7 of the petition not been properly verified?

(ii) What is the effect?

Petition No. 10/238.

II (i) Have the petition and list of particulars not been properly verified?

(ii) What is the effect?

Petition No. 11/239.

II (1) Has the petition not been property verified?

(2) If so, What is the effect?

Petition No. 14/304.

II (1) Has the petition not been properly verified?
what is the effect?

Petition No. 15/307.

IV (1) Have the petition and list of particulars not been properly verified?

(2) If so, what the effect?

4. The relevant portion of Order 6 Rule 15 C.P.C. is as follows:—

(1)

"(2) The persons verying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verified upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

In several proceedings governed by provisions of the Civil Procedure Code the omission to verify the pleadings and defective verification of pleadings have always been regarded as a mere irregularity and permission is therefore accorded for correction of this defect (I.L.R. 18 Allahabad, page 396 and I.L.R. 46 at Allahabad, page 637). The respondents in these cases have urged that the general power of amendment of pleadings expressly granted by the Code of Civil Procedure to courts of law or inherent in them under the Code are not necessarily the powers of Election Tribunals under the Representation of the Peoples Act, '51. In support of this argument, it is said that the R. P. Act has prescribed the powers of Election Tribunals in sub-section (3) of section 83 and consequently it should not be permissible to go beyond these limits. The contention gives rise to a large issue of the power of amendment in a general way. We do not propose to deal with his general question in this order, because we are not called up to decide it in connection with this issue which is related to verification clause only. It is, however, pertinent to observe that a Statue which enjoins the decision of some questions in a judicial way through the agency of specially constituted Tribunal may not expressly provide for matters of technicalities and details in the exercise of such powers for the fair and effectual decision of such question. Some inherent powers for the attainment of the objective in view may therefore be implied. This does not however mean that such implied powers can be pushed beyond legitimate limits.

5. We have examined the various cases dealing with this question decided by election tribunals and have also examined other relevant cases decided in connection with election petitions prior to the enactment of the R. P. Act, 1951. The general view seems to be that if the verification clause is in substantial compliance with the provisions of law regarding such verification, errors in technicalities may be condoned or allowed to be amended. But if verifications really grossly improper and farcial and consequently no verification in the eye of law, it may be otherwise. Without committing ourselves to a general view regarding the power of Tribunals in the matter of amendments, we are in respectful agreement with the opinions expressed by the Election Tribunal Allahabad in Election Petition No. 198 of 1952 dated 2nd December 1952 (Shri Govind Malvi *Vs.* Murli Manohar) and Election Tribunal Rajnandgaon in Election Petition No. 296 of 1952, dated 27th November, 1952 (Moti Lal *versus* Trilochan Singh).

6. Now we propose to deal with specific cases on merits.

(a) In petition No. 6/175 of 1952 the verification clause stands as follows:—

"I verify that the allegations made in paras above of the said petition are correct to my personal knowledge and belief". This verification only adds the words "and belief" to a perfectly valid verification according to law. In the cases referred to above decided by the High Court Allahabad Election Tribunal Allahabad, these words were not considered improper. We hold that the verification in this petition is valid.

(b) In petition No. 9/237 verifications of all paragraphs and sub-paragraphs except 7(b), (F) (m), & (n) and paragraphs 7(i) are correct and unexceptionable. The rest of paragraphs except paragraph 7(1) have been verified partly on personal knowledge and partly on personal knowledge received and believed to be true. This had to be necessarily so because some sentences in these subparas referred to matters of personal knowledge and some portions are based on knowledge derived from others but believed by the petitioner. This verification is therefore in substantial compliance with the provisions of law. The only question which remains is that of 7(i). This sub-para. has been verified as the petitioner's "belief and submission". Its perusal shows that it contains the petitioner's interference and as such may not call for verification in the prescribed manner. This petty error, if it is an error at all, merits condonation. We therefore hold the verification in this petition does not violent to the provisions of law and the verification is therefore not improper.

(c) In petition No. 10/238 the verification clause are exactly similar to those in petition No. 9/237 and our finding, therefore, is the same. It may, however, be added that the list of particulars has been verified on personal knowledge of the petitioner and this verification is lawless. We therefore, hold that the verification in this case is not improper and needs no amendment.

(d) In petition No. 11/239 the verification clauses are exactly similar to those in the petition adverted to above. For the same reasons we hold that they are not invalid and no amendment is called for.

(e) In petition No. 12/249 the verification of most of the paragraphs is quite proper. The only question is about para 5(e) and (f). The allegations in these sub-paras are a matter of inference made by the petitioner and have been verified as based on his belief. But these two sub-paras contain important statements of fact and the petitioner should mention the basis of such belief. He should do so within a week, otherwise the verification is valid.

(f) In petition No. 14/304 the major portion of the allegations in the petition and list of particulars has been verified correctly. The only question is about the verification of argumentative and inferential portions of the petition contained in paras. 7(i), (x), (z), (bb), and 7 (cc). In these paragraphs there are some allegations of fact mixed up with other general allegations which seem to be based on information received and believed by the petitioner. It is, therefore, necessary that the petitioner should not describe them as mere submission and should clearly verify this portion as based on information received and believed to be true or on other basis for these allegations. We hereby permit the amendment or verification clause in respct of paragraphs 7(i), (x), (z), (bb) and 7(cc) within a week and hold that the rest of the petition has been properly verified.

(g) In petition No. 15/307 all paragraphs except paras Nos. 6(10) and 6(11) have been properly verified. The allegations in paras 6(10) and 6(11) are of a serious nature and their verification as "submission" should not pass muster in this case. It is, therefore, ordered that paragraphs 6(10) and 6(11) should be verified according to the provision of law and the petitioner should do so within a week as prayed for.

7. We may add that under section 85 of the R.P. Act 1951 the Election Commission has been directed to dismiss petitions for non-compliance of the provisions of sections 81, 83 and 117 of the Act. Under section 90 sub-section (4) of the Act this question has been left to the discretion of Election Tribunals. Such discretion has to be exercised judicially and according to the accepted principles for its exercise and not arbitrarily or unreasonably. While recording our findings on these issues we have given careful consideration to the principles of law laid down in the various rulings for the correct interpretation of the expressions "May" and "shall" and some implied powers implicit in the constitution of Tribunals of this character.

8. As already clearly expressed, this order dismisses of the aforesaid issues a rising in the petitions referred to above and should be deemed to be the order in each case.

The 15th January 1953.

E. A. N. MUKARJI, *Chairman*,
G. L. SRIVASTAVA, *Member*,
U. S. PRASAD, *Member*.

[No. 19/237/52-Elec. III/3237.]
By Order,
P. R. KRISHNAMURTHY, Asstt. Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1953